

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOYCE D. KOHLMAN)

For Appellant: Joyce D. Kohlman,
in pro. per.

For Respondent: Kathleen El. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Joyce D. Kohlman for refund of personal income tax in the amount of \$179.00 for the year 1978.

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The issue is whether appellant is entitled in 1978 to bad debt deductions for moneys she advanced to her daughter and to a friend, Robert J. Auchter.

In February 1978, appellant advanced \$4,630 to her daughter. No written agreement was entered into, and appellant received no security. Appellant claims that her daughter agreed to repay the amount advanced, plus ten percent interest, and agreed to execute a promissory note. Appellant asserts that after the funds were transferred, her daughter refused to sign a note. According to appellant, in 1978, she went to Chicago, Illinois, and to Washington, D.C., to see her daughter and to ask her to repay the \$4,600, but she refused to make any payment. After the second trip, appellant states that she became convinced that there would be no repayment.

Appellant claimed a second bad debt deduction for a loan of \$2,000 she made to Mr. Robert Auchter during April 1975. Mr. Auchter signed an installment note in which he promised to pay a total of \$2,200, with monthly payments of \$100. However, he made no payments. Appellant claims that she contacted him by telephone and letter on several occasions to request payment, and, in 1978, traveled to Seattle, Washington, to urge him to pay the debt. When these efforts proved ineffective, appellant concluded that the debt was worthless.

Appellant filed an amendment to her 1978 personal income tax return in which she deducted the two advances as bad debts. Respondent determined that appellant was not entitled to a bad debt deduction for either of the advances and denied her claim for refund. Subsequent to appellant's protest, respondent reaffirmed the denial and this appeal was filed.

Revenue and Taxation Code section 17207 allows a deduction for "any debt which becomes worthless within the taxable year." The taxpayer has the burden of proving that he is entitled to the bad debt deduction. (Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975). The taxpayer must first prove that the debt is bona fide; that is, that it arose "from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money." (Cal. Admin. Code, tit. 18, reg. 17207(a), subd. (3), (Repealer filed April 18, 1981, Reg. 81, No. 16).) The taxpayer must also prove that the debt became worthless during the year in which the

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deduction is claimed.. (Appeal of Fred and Barbara Baumgartner, Cal. St. Bd. of Equal., Oct. 6, 1976.) In order to do this, he must prove that the debt had some value at the beginning of the year in which the deduction is claimed, and that some event occurred during that year which caused the debt to become worthless. (Appeal of Myron E. and Daisy I. Miller, Cal. St. Bd. of Equal., June 28, 1979.)

Respondent disallowed the deduction of appellant's advance to her daughter because it found that appellant failed to prove that a bona fide debt existed. This board has previously noted that claimed deductions arising from intrafamily transactions must be rigidly scrutinized, and that no deduction is allowed "unless there is an affirmative showing that there existed at the time of the advance a real expectation of repayment and an intent to enforce collection." (Appeal of Arthur and Kate C. Heimann, Cal. St. Bd. of Equal., Feb. 26, 1963.) Appellant asserts that the amount advanced to her daughter was a bona fide loan, that she expected repayment, and that she demanded repayment. However, these unsupported assertions do not meet appellant's burden of proof. (Appeal of Harry P. and Florence O. Warner, Cal. St. Bd. of Equal., April 22, 1975.) Appellant's daughter lived a considerable distance from appellant and a sizable sum of money was being advanced, yet appellant did not require either a promissory note or collateral before advancing the money. These facts seem to indicate a lack of a genuine expectation of repayment and intent to enforce collection. Appellant argues that her claim is supported by the fact that she made two visits to her daughter to demand repayment of the amount advanced. However, appellant produced no evidence to prove that the visits were for the purpose of demanding repayment. Without such evidence, it is reasonable to assume that the trips were merely social visits. Since appellant has not proven that the advance to her daughter was a bona fide debt, respondent correctly disallowed the claimed bad debt deduction.

Respondent disallowed the deduction of the advance to Mr. Auchter on the ground that appellant had not proven the debt became worthless during 1978. Appellant relies upon her claim that she went to Seattle to demand payment and did not receive it. At most, this explains why appellant concluded in 1978 that the debt was worthless. This board has repeatedly held that evidence of the date upon which the taxpayer ascertained a debt to be worthless is irrelevant; the taxpayer must

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prove when the debt actually became worthless. (Appeal of Fred and Barbara Baumgartner, supra.) Since appellant has not proven that the Auchter debt actually became worthless during 1978, respondent correctly disallowed a deduction for that debt.

For the foregoing reasons, the actions of respondent must be sustained.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Joyce D. **Kohlman** for refund of personal income tax in the amount of \$179.00 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day
of June , 1982, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Dronenburg, and .
Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenberg, Jr., Member

Richard Nevins _____, Member

_____, Member

_____, Member